



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,162	10/22/2003	Marie D. Radatti	E-3623	5978

7590 08/09/2010
Harding, Earley, Follmer & Frailey
86 The Commons at Valley Forge East
1288 Valley Forge Road
PO Box 750
Valley Forge, PA 19482-0750

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
----------	--------------

1781

MAIL DATE	DELIVERY MODE
-----------	---------------

08/09/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/691,162	Applicant(s) RADATTI ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23,24,37 and 39-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23,24,37 and 39-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Cellulose is described as a bulking agent on page 4, line 5 of paragraph 2 and not an insoluble fiber. Applicant argues that one of ordinary skill in the art would understand cellulose to be an insoluble fiber. This is disagreed with. Cellulose is mentioned on page 4 as a bulking agent along with maltodextrin. High fiber flours are described on page 3 as being both water soluble or insoluble. There is no suggestion in the specification that cellulose, as the bulking agent, is an insoluble fiber.

Claim 24 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for cellulose, does not reasonably provide enablement for insoluble fiber that is cellulose. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in

scope with these claims. Cellulose is described as a bulking agent on page 4, line 5 of paragraph 2 and not an insoluble fiber.

Applicant argues that one of ordinary skill in the art would understand cellulose to be an insoluble fiber. This is disagreed with. Cellulose is mentioned on page 4 as a bulking agent along with maltodextrin. High fiber flours are described on page 3 as being both water soluble or insoluble. There is no suggestion in the specification that cellulose, as the bulking agent, is an insoluble fiber.

The rejection of claims 37, 39 and 40 under 35 USC 112, first paragraph has been withdrawn in response to applicants' amendments to the specification.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 24, 37 and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tye (5,308,636) for reasons of record.

Applicant argues that his invention provides flour that is used in an admixture. This feature is not part of the claims. Applicant argues that the

dough is a part of the food product and that the dough is not a cooked food product. Example 9 describes a surimi analogue made from konjac, fish and potassium carbonate with starch and water. In this case fish is considered to be the animal based protein concentrate. The ingredients are mixed, placed in casings and cooked at 85-90C. The final product was said to have higher gel strength and less syneresis than a product without konjac. In this case potassium carbonate would be expected to provide a useful source of gas bubbles. The food product contains dough that is slowly transformed from dough to a surimi analogue. One of ordinary skill in the art would expect the product to have a dough texture for most if not all of the cooking time in example 9. The final product is further preserved by refrigeration or freezing. It is known in the art to partially cook foods for further storage and then provide the final cooking of the food on thawing.

Applicant argues that he is not claiming heating dough to 100C but rather claims dough with a uniform mixture of homogeneous konjac and animal protein. This has been considered but is not persuasive. The admixture of the claims is open to other ingredients and the admixture could also be dough.

Applicant argues that the gas bubbles are provided by mechanical methods in claim 37 and not through cooking. This has been considered but is not persuasive. The claims are directed to a product and not to the way the product is made. The fact that the gas bubbles may have been provided by a different process is not seen to constitute unobviousness.

Applicant argues that he does not disclose partial cooking of the dough. The claims are open to the inclusion of partially cooked dough.

Applicant argues that Tye does not contain dough because it is cooked. It is the examiners' position that even the cooked product would contain cooked dough. Applicant argues the texture but improved texture is a matter of opinion. Applicant is comparing his admixture texture with an unknown. It is not seen that the claims require the texture of the admixture is necessarily a dough texture.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a

first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private

PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1781

Application/Control Number: 10/691,162
Art Unit: 1781

Page 8